

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
FERNANDO HERNANDEZ, JUANY :
GUZMAN, BRANDON ROSE, IRVING : Case No.: 15-CV-1338 (ALC)
COLLADO, ANDRES SALAS, BENGALY :
KONATE, MICHAEL J. RODEIGUEZ, :
WILTON A. DARDAINE, and JUAN :
CORREA, :
:
Plaintiffs, :
:
-- against -- :
:
THE FRESH DIET, INC., LATE NIGHT :
EXPRESS COURIER SERVICES, INC. :
(FL), FRESH DIET EXPRESS CORP. :
(NY), THE FRESH DIET – NY INC. (NY), :
FRESH DIET GRAB & GO, INC. (FL) :
a/k/a YS CATERING HOLDINGS, INC. :
(FL) d/b/a YS CATERING, INC. (FL), :
INNOVATIVE FOOD HOLDINGS, INC. :
(FL), FRESH DIET EXPRESS CORP. (FL), :
NEW FRESH CO., LLC (FL), :
SYED HUSSAIN, Individually, JUDAH :
SCHLOSS, Individually, and SCHER :
ZALMAN DUCHMAN, Individually, :
:
Defendants. :
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DECLARATION OF DAVID SACK

DAVID SACK, pursuant to 28 U.S.C. §1746, declares as follows:

1. I am an attorney duly admitted to the Bars of the State of New York and of this Court. I am associated with Feder Kaszovitz LLP, attorneys for Innovative Food Holdings, Inc. (“Innovative”), Defendant herein.

2. I make this Declaration upon personal knowledge and a review of the file in this case in support of Innovative's motion, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the Fourth Amended Complaint in its entirety, with prejudice, and without leave to amend.

3. Attached hereto as Exhibit A is a true and correct copy of the Fourth Amended Complaint.

4. Attached hereto as Exhibit B is a true and correct copy of the Court's scheduling Order with respect to this motion, entered February 1, 2017.

5. Attached hereto as Exhibit C is a true and correct copy of Innovative's Form 10-Q for the period ended September 30, 2015.

6. Attached hereto as Exhibit D is a true and correct copy of Innovative's Form 10-Q for the period ended September 30, 2014, including Exhibit 10.1 thereto, the Agreement and Plan of Merger among Innovative Food Holdings, Inc., The Fresh Diet, Inc., and FD Acquisition Corp.

7. Attached hereto as Exhibit E is a true and correct copy of Innovative's Form 10-Q for the period ended September 30, 2015.

8. Attached hereto as Exhibit F are true and correct copies of filings by The Fresh Diet, Inc. with the Florida Secretary of State, dated February 27, 2014, February 23, 2015, and July 28, 2016, respectively.

Executed at New York, New York on March 10, 2017.

I declare under the penalties of perjury that the foregoing is true and correct.



David Sack